



U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File:

Office: SAN FRANCISCO, CA

Date:

JAN 25 2001

IN RE: Applicant:

Application:

Application for Waiver of Grounds of Inadmissibility under
Section 212(i) of the Immigration and Nationality Act, 8
U.S.C. 1182(i)

IN BEHALF OF APPLICANT:

PUBLIC COPY

identification data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, California, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under § 212(a)(6)(C)(i) of the Immigration and Nationality Act, (the Act), 8 U.S.C. 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation in 1991. The applicant is married to a naturalized United States citizen and is the beneficiary of an approved petition for alien relative. She seeks the above waiver in order to remain in the United States and reside with her spouse and children.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly.

On appeal, counsel argues that the decision to deny the applicant's waiver request omitted consideration of all the relevant factors as required by statute and case law.

The record reflects that the applicant procured admission into the United States in 1991 by presenting the United States passport of another person in which her photograph had been substituted.

Section 212(a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(6) ILLEGAL ENTRANTS AND IMMIGRATION VIOLATORS.-

(C) MISREPRESENTATION.-

(i) IN GENERAL.-Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) ADMISSION OF IMMIGRANT INADMISSIBLE FOR FRAUD OR WILLFUL MISREPRESENTATION OF MATERIAL FACT.-

(1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to the United

States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

(2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

In 1986, Congress expanded the reach of the ground of inadmissibility in the Immigration Marriage Fraud Amendments of 1986, P.L. No. 99-639, and redesignated as § 212(a)(6)(C) of the Act by the Immigration Act of 1990 (Pub. L. No. 101-649, Nov. 29, 1990, 104 Stat. 5067) effective June 1, 1991. Congress imposed the statutory bar on (a) those who made oral or written misrepresentations in seeking admission into the United States; (b) those who have made material misrepresentations in seeking entry admission into the United States or "other benefits" provided under the Act; and (c) it made the amended statute applicable to the receipt of visas by, and the admission of, aliens occurring after the date of the enactment based on fraud or misrepresentation occurring before, on, or after such date.

In 1990, § 274C of the Act, 8 U.S.C. 1324c, was inserted by the Immigration Act of 1990 (P.L. 101-649, Nov. 29, 1990, 104 Stat. 5059), effective for persons or entities that have committed violations on or after November 29, 1990. Section 274C(a) provided penalties for document fraud stating that it is unlawful for any person or entity knowingly "to use, attempt to use, possess, obtain, accept, or receive or to provide any forged, counterfeit, altered, or falsely made document in order to satisfy any requirement of this Act...."

In 1994 Congress passed the Violent Crime Control and Law Enforcement Act (P.L. 103-322, September 13, 1994), which enhanced the criminal penalties of certain offenses, including 18 U.S.C. 1546:

(a)...Impersonation in entry document or admission application; evading or trying to evade immigration laws using assumed or fictitious name...knowingly making false statement under oath about material fact in immigration application or document....

(b) Knowingly using false or unlawfully issued document or false attestation to satisfy the Act provision on verifying whether employee is authorized to work.

The penalty for a violation under (a) increased from up to 5 years imprisonment and a fine or both to up to 10 years imprisonment and a fine or both. The penalty for a violation under (b) increased from up to 2 years imprisonment or a fine or both to up to 5 years imprisonment or a fine, or both.

In 1996, Congress expanded the document fraud liability to those who engage in document fraud for the purpose of obtaining a benefit under the Act. Congress also restricted § 212(i) of the Act in a number of ways. Sections 212(a)(6)(C) and 212(i) of the Act were amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub L. 104-208, 110 Stat. 3009. There is no longer any alternative provision for waiver of a § 212(a)(6)(C)(i) violation due to passage of time. In the absence of explicit statutory direction, an applicant's eligibility is determined under the statute in effect at the time his or her application is finally considered. See Matter of Soriano, 21 I&N Dec. 516 (BIA 1996, A.G. 1997).

If an amendment makes the statute more restrictive after the application is filed, the eligibility is determined under the terms of the amendment. Conversely, if the amendment makes the statute more generous, the application must be considered by more generous terms. Matter of George and Lopez-Alvarez, 11 I&N Dec. 419 (BIA 1965); Matter of Leveque, 12 I&N Dec. 633 (BIA 1968).

In 1996, Congress also added a ground of inadmissibility for an alien who falsely claims to be a U.S. citizen for any purpose under the Act, including the Act's employment authorization attestation requirements, or under any other federal or state law. This provision applies to false representations of citizenship made on or after September 30, 1996. By its plain language, this ground requires a showing that the false representation was made for a specific purpose: to satisfy a legal requirement or to obtain a benefit that would not be available to a noncitizen. This requirement also suggests that the individual must know that the representation is false.

After reviewing the amendments to the Act and to other statutes regarding fraud and misrepresentation from 1957 to the present time, and after noting the increased impediments Congress has placed on such activities, including the narrowing of the parameters for eligibility, the re-inclusion of the perpetual bar, eliminating alien parents of U.S. citizens and resident aliens as applicants and eliminating children as a consideration in determining the presence of extreme hardship, it is concluded that Congress has placed a high priority on reducing and/or stopping fraud and misrepresentation related to immigration and other matters.

To recapitulate, the applicant committed fraud in procuring admission into the United States by presenting a fraudulent (photo-substituted) United States passport.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from § 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Although extreme hardship is a

requirement for § 212(i) relief, once established, it is but one favorable discretionary factor to be considered. See Matter of Mendez-Moralez, 21 I&N Dec. 296 (BIA 1996).

In Matter of Cervantes-Gonzalez, Interim Decision 3380 (BIA 1999), the Board of Immigration Appeals (BIA) stipulated that the factors deemed relevant in determining whether an alien has established extreme hardship pursuant to § 212(i) of the Act include, but are not limited to, the following: the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and finally, significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

The record reflects that the applicant and her spouse have been married for ten years and have two children. The record includes numerous letters from her family, friends, business associates and community leaders attesting that the applicant is a dedicated mother, property owner and church member, and a loving spouse.

The record also reflects that the applicant's spouse is a 31 year old native of Mexico who naturalized as a United States citizen in 1998. He is employed and earns a salary well above the poverty guidelines for a family of four. There is no indication in the record to indicate that he has any health condition requiring medical care.

On appeal, counsel acknowledges that hardship to the applicant's children is not a consideration in § 212(i) proceedings, but states that consideration should be given to their emotional and economic welfare. The record reflects that if the applicant were to depart the United States, it would be difficult for her husband to both work and care for the children. In addition, the applicant's spouse feels that the children need the example of the couple's strong, loving relationship as well as the attention of both parents.

On appeal, counsel cites the Department of State's 1999 Country Report of Human Rights Practices for Mexico but fails to specifically establish the applicability of the sections cited to the case at hand. If counsel is asserting that it is unsafe for the applicant's spouse and children to live in Mexico, it should be emphasized that there are no laws that require United States citizens to leave the United States and live abroad. If counsel is asserting that it is unsafe for the applicant to return to Mexico, it should be restated that hardship to the applicant herself is not a consideration in § 212(i) proceedings. A finding of ineligibility

under § 212(i) does not, however, preclude an applicant from filing an application for asylum under § 208 of the Act, in accordance with the instructions contained in 8 C.F.R. Part 208.

In Perez v. INS, 96 F.3d 390 (9th Cir. 1996), the court stated that "extreme hardship" is hardship that is unusual or beyond that which would normally be expected upon deportation. The common results of deportation are insufficient to prove extreme hardship. See Hassan v. INS, 927 F.2d 465 (9th Cir. 1991). Further, the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being removed. See Shooshtary v. INS, 39 F.3d 1049 (9th Cir. 1994).

A review of the factors presented, and the aggregate effect of those factors, indicates that the applicant's spouse would suffer hardship due to separation. The applicant has failed, however, to show that the only qualifying relative, her husband, would suffer extreme hardship over and above the normal disruptions involved in the departure of a family member. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a favorable exercise of the Attorney General's discretion.

In proceedings for application of waiver of grounds of inadmissibility under § 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. See Matter of T-S-Y, 7 I&N Dec. 582 (BIA 1957). Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.